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IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ERICH K. W. RENNER,

Appellant,

vs.

IMMIGRATION & NATURALIZATION
SERVICE,

Appellee.

FILED

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APPELLANT'S OPENING BRIEF

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

EDWARD RAIDEN

257 South Spring Street
Los Angeles, California 90012

Attorney for Appellant

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TOPICAL INDEX

	<u>Page</u>
Table of Authorities	iii
JURISDICTION	1
STATEMENT OF THE CASE	2
FACTS	6
QUESTIONS PRESENTED	16
SUMMARY OF ARGUMENT	18
ARGUMENT	21
I THE FINDINGS OF THE COURT DO NOT SUPPORT REJECTION OF NATURALIZATION.	21
II THE EVIDENCE DOES NOT SUPPORT THE FINDINGS.	25
III THE POWER TO DECLARE WHO MAY BECOME CITIZENS RESTS WITH CONGRESS AND NEITHER THE COURTS NOR ANY ADMINISTRATIVE AGENCY MAY EXTEND OR RESTRICT THE REQUIREMENTS ESTABLISHED BY CONGRESS.	33
IV IT WAS A FAILURE OF DUE PROCESS FOR THE EXAMINER TO TAKE THE TESTIMONY OF WITNESSES IN OPPOSITION TO NATURAL- IZATION WITHOUT TAKING THE TESTIMONY OF PETITIONER AND HIS WITNESSES.	34
V THERE WAS A FAILURE OF DUE PROCESS WHEN A NECESSARY STEP IN THE ADMIN- ISTRATIVE-JUDICIAL PROCESS WAS LEFT OUT.	35
VI IT WAS ERROR TO ADMIT THE RECORD OF THE EXAMINER'S HEARINGS, ESPECIALLY SINCE IT INCLUDED THE HEARSAY LETTER.	40
VII CONGRESS INTENDED THAT THE EXAMINER NOT ACT AS A PARTISAN IN THE COURT HEARING WHICH IN EFFECT REVIEWS HIS DECISION.	40

	<u>Page</u>
VIII IS PETITIONER TO BE TESTED BY EVERY PERSON TO WHOM HE TALKED; AND IS WHAT HE IS PURPORTED TO HAVE SAID ABSOLUTE AND BINDING?	41
CONCLUSION	43
CERTIFICATE	44
APPENDIX	A-1

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Busey v. Deshler Hotel Co., 130 F.2d 187, 142 A.L.R. 563	39
Cohnstaedt v. I. & N. S., 339 U.S. 901, 70 S.Ct. 516	43
Federal Maritime Bd. v. United States, 72 S.Ct. 623, 342 U.S. 950, 96 L.Ed. 706	35
Ex Parte Fillibertie, 62 F.Supp. 744	34
Giruoard v. United States, 328 U.S. 61, 66 S.Ct. 826	34, 43
Isbrandtsen Co. v. United States, 96 F.Supp. 883, affirmed A/S J. Ludwig Mowinckels Rideri v. Isbrandtsen Co., 72 S.Ct. 623, 342 U.S. 950, 96 L.Ed. 706	35
Krausse v. United States, 194 F.2d 440	43
In re Kullman, 87 F.Supp. 1001	25
J. B. Montgomery, Inc. v. United States, 206 F.Supp. 455, affd. 84 S.Ct. 884, 376 U.S. 389, 11 L.Ed.2d 797, reh. denied 84 S.Ct. 1218, 377 U.S. 925, 12 L.Ed.2d 217	39
Application of Murra, 178 F.2d 670	40
N. L. R. B. v. Pettyman, 117 F.2d 786	41
Petition of Petcheff, 142 F.Supp. 494	42
Schneiderman v. United States, 63 S.Ct. 1333, 320 U.S. 118	21
Simmons v. United States, 348 U.S. 397, 75 S.Ct. 397	38

	<u>Page</u>
Petition of Sittler, 197 F.Supp. 278, affd. Sittler v. United States, 316 F.2d 312, cert. den. 84 S.Ct. 702, 376 U.S. 932	33
Stark v. Wickard, 64 S.Ct. 559, 321 U.S. 288	40
Stasiukevich v. Nicolls, 168 F.2d 474	25, 34, 41
Stevens v. United States, 190 F.2d 880	40
Tatum v. United States, 270 U.S. 568, 70 L.Ed. 738, 46 S.Ct. 425	1
United States v. Anzalone, 100 F.Supp. 987, reversed 197 F.2d 714	33
United States v. Girouard, 149 F.2d 760	34
United States v. Lehigh Val. Co-op. Farmers, 183 F.Supp. 80, reversed 287 F.2d 726, reversed 82 S.Ct. 1168, 370 U.S. 76, 8 L.Ed.2d 345	39
United States v. Rossler, 144 F.2d 463	25
United States v. State of California, 67 S.Ct. 1658, 332 U.S. 19, supplemented 68 S.Ct. 20, 332 U.S. 804	39
United States ex rel. Hirshberg v. Malanaphy, 168 F.2d 503, revd. 69 S.Ct. 530, 336 U.S. 210	39

Statutes

8 U.S.C. §1424	16, 18, 34
8 U.S.C. §1445	2
8 U.S.C. §1446	35
8 U.S.C. §1446(b)	2, 9, 12, 19, 35

	<u>Page</u>
8 U.S.C. §1446(c)	3, 19, 35
8 U.S.C. §1446(d)	3, 19, 20, 35, 40
8 U.S.C.A. §1447	1
8 U.S.C. §1447(a)	4

Regulations

U.S. Code Cong. News, Administrative Regulations Under the Immigration and Nationality Act:

§335.12	3, 37
§335.13(c)	3, 37
§336.11	3, 38
§336.13	38
§336.14	38

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JURISDICTION

This is an appeal from a judgment and order of the United States District Court in the Central District of California denying appellant's petition for naturalization.

Title 8, U.S.C.A. §1447 confers jurisdiction on the District Court to hear the petition for naturalization. The United States Court of Appeals has jurisdiction to hear an appeal from the judgment and order denying naturalization. (Tatum v. United States, 270 U.S. 568, 70 L.Ed. 738, 46 S.Ct. 425). Notice of appeal was filed in the time and manner required by law (CT 80). (References to CT are to the Clerk's Transcript; RT are to reporter's transcript.)

STATEMENT OF THE CASE

Appellant petitioned for naturalization pursuant to 8 U. S. C. §1445. He was then the trainer of guide dogs for International Guiding Eyes. One of his sponsors was Kurt Herman, an employee (RT p. 137, line 17 et. seq.). Before any hearing, petitioner resigned as the trainer for International Guiding Eyes (RT 26) and went to work for Eye Dog Foundation, a competitor of International Guiding Eyes (RT p. 27, line 2). Shortly thereafter objections to his petition were made by the same Kurt Herman and three other employees of International Guiding Eyes (Ct. Ex. 1A, 1B, 1C, 1D). The objections took the form of an accusation that petitioner, while a trainer for International, had had some medical treatment for his own dogs which had been charged to International. Two of these objectors also claimed that petitioner was not attached to the principles of the United States because he had, on several occasions in the past, made certain statements.

An investigation was conducted before an employee of the Immigration Service. (8 U. S. C. §1446 (b)). Though that section provides for the taking of testimony of the petitioner and his witnesses, the examiner only took the testimony of the witnesses in opposition. (Ex. 1A, 1B, 1C, 1D, 1E, 1F; RT 121, 133, 211. The transcripts appear in the Clerk's Transcript, but the pagination on our copy cannot be seen.) The question was raised by the objection to the admission of the record (RT 121, 133, 211) and by the appeal from the judgment (CT 80).

In the discretion of the Attorney General, the record, with the recommendation of the employee designated to investigate, may be transmitted, to the Attorney General (8 U.S.C. §1446 (c)). The record of this trial, and what the investigator made as a record, do not show that the Attorney General ever exercised such discretion. (This question was raised by the objections to Findings and Conclusions of Examiner [CT 50], by the objection to admission [RT 121, 133, 211], by the motion for a new trial [CT 65] and by the appeal from the judgment [CT 80]). U. S. Code Cong. News, Administrative regulations under the Immigration and Nationality Act §336.11 provide that the Commissioner may make contrary findings; and if he did, a person other than the examiner shall represent the government. There is no record of any action by the Commissioner, and the same examiner represented the government.

Where the recommendation of the employee and that of the Attorney General do not agree, both views shall be submitted to the trial court. (§1446d). No recommendation of the Attorney General was ever submitted. In view of that failure, appellant contends that a necessary step in the administrative-judicial process has been left out. This question was raised by the objections to the Findings of the Examiner (CT 50), the motion for a new trial and the appeal from the judgment. U. S. Code Cong. News, Regulations, §335.12 provide for submission to the Commissioner. The record does not show that this was done. If there was disagreement, petitioner was entitled to notice (Regl. §335.13

(c)) and both recommendations were to be submitted to the court. This was not done. The question was raised by the objections to the Findings of the Examiner, the motion for a new trial and the Notice of Appeal.

The recommendation of the investigator was that the petition for naturalization be denied because petitioner had failed to show (1) good moral character; and (2) attachment to the principles of the Constitution and government of the United States (CT 44).

The matter was then brought on in the trial court (8 U. S. C. §1447 (a)). Petitioner and thirteen witnesses testified favorably to petitioner. The four employees of his former employer testified unfavorably. All four testified to alleged use of a veterinary for petitioner's dogs at the cost of the employer. Two testified to comments petitioner is said to have made about Hitler and Germany.

The transcript of the preliminary examination, as limited by the examiner, was offered in evidence and received over objection (RT 121, 133, 211). The recommendation of the examiner (CT 44) was admitted. With that, and the transcripts, was submitted a letter written to the Immigration Service in November, 1956 (CT 43). Of course the writer could not be cross-examined.

The court found (CT 71) that there had been no irregularity insofar as services for petitioner's dogs were concerned, and therefore supported petitioner on the issue of good moral character.

The court found that petitioner was not attached to the principles of the Constitution because petitioner had made the following statements:

- (1) that Hitler was not a bad man;
- (2) that Hitler was needed in Germany;
- (3) that the Nazi Party was preferable to the two major political parties in this country;
- (4) that conditions in Germany were much better than here under our existing form of government;
- (5) that he will retire in Germany.

Naturalization was denied (CT 72).

On a motion for a new trial, the trial court stated in its decision that the judgment was based solely upon its own evaluation of the testimony adduced at the independent hearing and without regard to any of the preliminary examination materials (CT 78).

Finding (3) is not supported by the testimony. This question was raised by the motion for a new trial and by the appeal.

Finding (4) does not show what "conditions" petitioner is said to have made reference to. "Conditions" being vague and the time stretches backward from the American occupation (when the United States was contributing substantial help and taxing the American citizens here for it), or before, when petitioner was in a submarine, at sea; or before that when petitioner was between 10 and 16 years of age. This question was raised by the motion for a new trial and by the appeal.

The trial court should have, and this Court may, take

judicial notice of the fact that the Nazi party gained control in Germany January 30, 1933, when petitioner was 10 years old; that World War II began in September, 1939 when petitioner was 16 years old; that the United States did not become a belligerent until December, 1941. Thus when World War II began, petitioner was only 16 years old, and when the United States became a belligerent petitioner was 18 years old and already at sea as a submariner. He was 23 when the war was over and from then until he came to the United States he was under the American occupation.

The entire testimony allegedly supporting petitioner's lack of attachment to the United States Government is annexed to this brief. It is culled from the testimony of the witnesses Arthur Marinaccio and Audrey Whetzel. The balance of their testimony relates to their accusation that petitioner charged treatment for his own dogs to his employer (and on this count the court found their testimony untrue).

FACTS

Petitioner Erich Renner was born November 1, 1923. He went to regular and trade school until he was 16-1/2 (1940); then he worked in a factory and at 17 he went into the German Navy. He was in the Navy from late in 1940 to June of 1945 (RT 10). He had to join the Hitler Youth. Every youth was required to do so (RT 11). However he was never a member of the Storm Troops. He was in the Navy submarine service until the war ended (RT 12).

While in the Navy he moved up four ranks and came out a non-commissioned officer (RT 11). When he came out of the Navy he joined a school for Guide Dogs (RT 12). In 1947 he became a member of the West German police, and served there until September 3, 1955, when he came to the United States (RT 12)

According to the laws and regulations of the American occupation forces, every police officer had to be investigated and de-nazified; and he was cleared of any connection with the Nazi party (RT 13 and 48). He was subject to the control of the allied forces during the time he worked on the police force (RT 13) and he worked closely with American officers and was assigned to special duty with the military police and the C. I. D. (RT 14). He had always talked about going to the United States because he always had a love for the United States. His association with the American forces over there made that feeling even stronger (RT p. 14, line 15). He wanted to make a success here and the longer "we" (he and his family) stayed the more he made up his mind to stay (RT p. 15, line 2).

He came to the United States through a German group which asked him if he would like to come and manage a large German shepherd dog kennel which was trying to breed German shepherds, train for the blind and for police work (RT 15). The kennel he was supposed to work for agreed to pay his fees for shipping, wanting to use a dog he brought for breeding. No contract was made except that petitioner could pay the costs back as he saw fit later (RT 16). He went to South Carolina where the kennels were

and the owner of the kennel allowed his attack dog to attack petitioner because he wanted to see how the "great" German trainer would react (RT 16). He was supposed to receive \$350.00 per month but instead once in a while the owner handed him ten or fifteen dollars (RT 17). Altogether the situation was unbearable. Despite this and the fact that his two children had to walk two miles to the school bus stop (RT 18) petitioner stayed on there for four months (RT 19). Finally he told the employer he was leaving and the Sheriff and a friend of the Sheriff helped "them" move to another farm, where he worked for another few months (RT 20). Then he went to New York where there was a school for training guide dogs for the blind, and he got a job as an apprentice trainer (RT 21). After three or four months he went to Indiana where they might settle, with the help of some people (RT 22). Shortly after going to Indiana he received an offer from California to come out there and take over at a guide dog school called International Guiding Eyes. That was in 1958 (RT 22). He worked there as a trainer for the blind for eight years (RT 23). His children were eleven and twelve when he came to the United States (RT 23). At 17, his son wanted to go into the United States Armed Services and he encouraged him. He wanted him to go in the Navy but the son preferred the Air Force. Both he and his wife had to sign a consent for the boy to enlist because he was under eighteen (RT 24). Petitioner and his wife applied for citizenship 2/11/65 (RT 60). One of his sponsors was Kurt Hermann who worked for International Guiding Eyes (RT 30).

About six or eight weeks before he resigned from International Guiding Eyes the general manager retired and a new manager was installed. The new general manager and petitioner did not get along well and petitioner resigned (RT 26, 27, 28, 29) October 1st or 15th (RT 113). He immediately went to work for another foundation for the blind (RT p. 27, line 2).

After he resigned from International Guiding Eyes, Kurt Hermann, who had been one of his sponsors, Arthur Marinaccio (RT 53), John Maher (RT 53), who was the new manager with whom he couldn't get along, and Audrey Whetzel opposed his citizenship application (CT Ex. 1A, 1B, 1C, 1D). All were employees of International, his former employer. His wife's citizenship was granted (RT p. 35, line 24).

With respect to an accusation that petitioner charged his employer for veterinary services rendered his own dogs, petitioner pointed out that not only had he not doen so, but he sent many dogs to the organization, he donated many of his own dogs to the organization, and friends of his had donated many services, food and dogs (RT 56).

Upon the statements of the persons working for International Guiding Eyes, an investigation was conducted by the Immigration employee. Only the opposition witnesses were questioned (CT) although the Code (8 U.S.C. §1446(b)) requires that the examiner take the testimony of the petitioner and his witnesses. The examiner, without any approval or disapproval of the Attorney General made his recommendation for rejecting citizenship (and this was later intro-

duced into the trial record.) There was no recommendation or review by the Commissioner.

On the trial before the court, in addition to petitioner's own testimony, petitioner offered the testimony of Terry Kahn, a college instructor (RT 64) who had known the petitioner for two and a half years. Mr. Kahn is Jewish (RT 66) and when he met petitioner, he had reservations about him because petitioner had served in the German services in Nazi Germany (RT 66 and 69). The witness had many friends who suffered under the Nazi regime. He had talked about Nazism and Nazi Germany and the United States policies with the petitioner during the two and one half years he knew him (RT 67). When asked whether petitioner had, in that two and one half years ever indicated, directly or indirectly, that he had or would have loyalty to a government such as the Third Reich or the Nazis, he answered "Unequivocally No." (RT 67).

Mrs. Helen Kahn, who had lost some members of her family to the Nazi regime gave testimony to the same effect (RT 72-75).

Jay Koch, who knew the petitioner for four or five years, gave the same testimony, based on his own experience (RT 76).

Reginald Richard Kay, who knew the petitioner for three years gave the same testimony, based on his own experience (RT 88).

Gwinn Wiley, who knew the petitioner for six years, gave testimony that he would make a good citizen, but she was not questioned about political discussions (RT 91). She was a blind person.



Dorothy Scott, who was one of the commissioners on the State Guide Dog Board, where she served for fifteen years, testified she knew petitioner for eight years and gave him his license as a guide dog trainer. The Board checked his background and if it had been found that petitioner had any leanings toward foreign governments as opposed to the government of the United States that would possibly have kept him from getting a license (RT 93). She was threatened by Kurt Hermann with the removal of her dog (she is blind) (RT 97). She also testified that the State Board had checked out petitioner and had found him satisfactory. She advised that the investigation was on file with the State Guide Dog Board (RT 99). There is no evidence that the records had been checked out by the "investigator" for the Immigration Service, who was now a partisan opposing petitioner's naturalization. His partisanship is obvious in the "hearings" and in the trial. Often his questions are leading.

The next witness, called by the Immigration Examiner, is John Maher, the new general manager for International Guiding Eyes. His testimony is full of hearsay (RT 102, 103, 104, 105, 106, 107, 108, 109).

Kurt Hermann, next called by the examiner (RT 122), testified he knew the petitioner since 1956 (a matter of ten years). This witness had no recollection of petitioner doing anything wrong. The examiner insisted on telling him what he had testified to in the examiner's investigation, over objection of counsel (RT 128) and he introduced a transcript of what the witness had said (RT 129). Not

as "The Record" as per §1446(b) but as a refresher. The examiner then reminded the witness that he wished to withdraw his recommendation as a subscribing witness (RT 132). The reason the witness gave for doing so was that petitioner had a violent temper and "he flares up every time you reason with him" (RT 132). This from a man who knew him for ten years and only after petitioner left the employ of International Guiding Eyes was he withdrawing his subscription. Significantly, although this witness knew the petitioner for ten years, he never discussed the Government of the United States (RT 132).

Arthur Marinaccio testified he knew petitioner since 1956, a matter of ten years (RT 150). This witness' testimony, with respect to petitioner's attachment to the United States, is restated in the appendix to this brief.

Audrey Whetzel, testified she knew petitioner since 1960 (RT p. 183, line 25). She met him then when she applied for a guide dog. She didn't see him or hear from him again until 1964 (RT p. 184, line 2). This witness' testimony with respect to petitioner's attachment to the United States, is restated in the appendix to this brief.

It is difficult to specify what the witnesses claim respondent said to support Findings (3) and (4). The witness Whetzel said with respect to those Findings:

186. 8. Q. Insofar as any conversations now specifically with the Government of the United States is concerned, has he ever made any comments with respect

to the two-party system?

A. He doesn't feel that either party is the right one.

Q. What is it that he said, Mrs. Whetzel, in regard to the two party system, in regard to his opinion, or what you consider his opinion?

A. That neither one is the right one.

24. Q. Has he indicated by way of conversation that he prefers the Nazi form of government to the form of government of the United States?

187. 2. A. To me, yes. The fact that he claimed that Adolph Hitler was such a great man, and that the conditions that they lived in Germany were far superior to what they are here under our form of government.

She identified a complimentary letter she had sent petitioner in 1964.

It would seem from a careful reading of the testimony of both Whetzel and Marinaccio, that it does not support Findings (3) and (4). A statement that neither party is the right one hardly means that the Nazi Party was preferable to the two major political parties in this country; nor does Marinaccio's vague answer help support it.

177. 51. A. It is kind of hard to try to pick up specific things that were said. I can't -- I mean I would only be guessing at half the stuff, I mean I don't remember anything specific that was said from time to time. We are talking about years ago now.

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In opposition to this garbled testimony which seems remote from the actual Findings, we have petitioner's direct answers.

On cross-examination he was directed to his application and the question which asked DO YOU BELIEVE IN THE UNITED STATES CONSTITUTIONAL FORM OF (RT 57). GOVERNMENT OF THE UNITED STATES? YES, I DO.

Asked whether he preferred a government under the National Socialists, he answered

(RT 58) THAT HE NEVER PREFERRED A GOVERNMENT UNDER THE NATIONAL SOCIALISTS. A GOVERNMENT AS PRACTICED UNDER THE THIRD REICH.

He gave other pertinent answers.

(RT 33, line 23) THAT HE HAD NO OBJECTION TO BEARING ARMS FOR THE UNITED STATES

(RT 34, line 6) HE HAD NO FEELING OF LOYALTY TO THE NAZI REGIME.

(RT. 35, line 17) HIS SON IS MARRIED A JEWISH GIRL.

(RT 46, line 22) HIS FATHER WAS PERSECUTED BY THE NAZI FOR HIS POLITICAL BELIEFS.

(RT 58) HE PARTICIPATED IN DISCUSSIONS AND CRITICIZED BUT NOT IN A WAY TO CHANGE.

(RT 59) HE NEVER SAID HITLER AND HIS POLICIES WERE COMMENDABLE IN ANY SHAPE OR FORM.

(RT 59) HE INTENDS TO RESIDE PERMANENTLY IN THE UNITED STATES.

Petitioner called other witnesses.

John S. Roberts had been a member of the Board of Directors of International Guiding Eyes for ten years and knew petitioner for the entire time he was employed with International. The discussions he had had with the petitioner make him feel petitioner would be a good citizen and he would sponsor him.

Dr. Fred L. Newberry, a veterinarian, testified he knew petitioner for eight or nine years, visited in his home (RT 243) had many talks with him because both had been in their country's service, and petitioner never said anything that indicated he had more love for the Nazi regime than the United states (RT 244). He thought petitioner's feeling was to the contrary (RT 244).

Norbett Frank Renner, petitioner's son, now 21, testified that his father had encouraged him to go into the armed forces. That his father would fight for the United States (RT 254).

Hobart Stephenson, President of the California State Board of Guide Dogs for the Blind. He knew petitioner for six years; and trained under him twice (RT 256). He got into political discussions with petitioner and found that petitioner came to this country to get away from the old German Reich. That he thinks petitioner would make a good citizen and he would sponsor him.

Edward Raiden, an attorney and member of the Board of petitioner's new employer stated he knew him for seven years (RT 180); that in the blind community the petitioner's reputation was good; that he thought petitioner would make a good citizen and he would be glad to sponsor him (RT 182).

QUESTIONS PRESENTED

I

Assuming but not conceding, that the five findings were supported by the evidence, do they not constitute a basis for refusing naturalization?

II

The evidence does not support the findings.

III

Does 8 U.S.C. §1424 express Congress' complete intent as to a basis for refusing naturalization?

IV

Was it a failure of Procedural Due-process for the "examiner" to take the testimony of witnesses in opposition to naturalization without taking the testimony of petitioner and his witnesses?

V

Was it required to show that the Attorney General had decided not to review the case, or can the investigator make that decision for him?

V. a. Where the statute provides that if the Attorney General makes a contrary recommendation both shall be submitted to the court; was it required that the government show that the Attorney General had not recommended; or that he had, in accord with investigator; or must the Attorney General act one way or another?

V. b. The rules adopted by the Immigration and Naturalization

Department are contrary to statute and still were not followed. Did the court commit error in admitting the transcripts of hearings before the examiner? They do not show that petitioner was present. Admitted with them (all over objection) was a letter sent 10 years before by a person not present for cross-examination.

VII

Congress did not intend that examiner act as a partisan.

- VII. a. Is the test of what petitioner will do, made by what some stranger says he said, or is it what he says in petition or in testimony, or by certain actions inimical to the United States?
- VII. b. Is petitioner given opportunity to refuse to serve in Military or can anyone who asks him put him to test? Suppose he said to Whetzel he would not serve and the United States then asks him to and he is willing -- does it mean he still will not? (RT p. 34, line 1 -- he will)
- VII. c. If he tells Whetzel he will retire in Germany -- or that he will go to the moon -- is that so binding that when asked, he can't change his mind -- or say he does not intend to retire in Germany?

SUMMARY OF ARGUMENT

I

The Findings of the court do not support rejection of naturalization because the statements attributed to petitioner were mere comment and do not show either a lack of attachment to the principles of the Constitution or an unfavorable disposition towards the United States.

II

The evidence does not support the findings. The witnesses for the government attributed certain conversations to the petitioner but the conversations do not contain the statements attributed to the petitioner nor substantially those statements. He is said to have said that Hitler was not a bad man; a system is better when the government controls it; conditions he lived in Germany were superior to what they were here; speaking of the two party system, neither party was the right party; or he would retire in Germany.

III

8 U.S.C. §1424 spells out limitations on who may be naturalized, including in its orbit (1) nihilists (2) members of or affiliated with the Communist Party, or a totalitarian party of the United States, or Communist fronts (3) advocates of world Communism, or the establishment in the United States of a totalitarian dictatorship, or members of an organization which advocates such (4) advocates or teaches or is a member of or affiliated with an organization which advocates or teaches the overthrow by force or other unconstitutional means of the government of the United States

or all forms of law; or the duty or propriety of unlawfully assaulting or killing any officers of the United States or any other organized government; or unlawful injury or damage to property; or sabotage; or (5) who writes or publishes or causes to be written or publishes any advocacy of any of the doctrines of world Communism or the establishment in the United States of a totalitarian dictatorship; (6) member of, affiliated with, any organization that writes, etc., or causes to be written, etc., or has in its possession for the purpose of circulation, etc., any material as above outlined. Petitioner falls into none of these, and the court could not enlarge the limitations to the comments attributed to the petitioner.

IV

An administrative agency should make a fair and complete record and when the examiner was directed by 8 U.S.C. §1446(b) to take the testimony of witnesses and the petitioner, it was a failure of due process to take only the testimony of the government witnesses.

V

8 U.S.C. §1446(c) provides that after the hearing before the examiner, the record may be transmitted to the Attorney General for his recommendation. Sub(d) of that section provides that where the recommendation of the examiner and the Attorney General conflict, both shall be submitted to the court. The record is devoid of any showing that the Attorney General ever saw the record or made any recommendation, so nothing of that nature was



submitted to the court. Since the petitioner is entitled to the benefit of any recommendation by the Attorney General if there is no conflict, the failure to submit the matter to the Attorney General deprived petitioner of that consideration. The procedure above laid out in the statute is overruled by the Commissioner of Immigration without any authority or delegation of authority from the Congress. After setting up different regulations the Immigration & Naturalization Department still did not follow their own regulations which call for a review by the Commissioner, and notice to the petitioner of the Commissioner's recommendation.

VI

It was error to admit the record made by the examiner since that contained a hearsay letter written ten years before the petitioner applied for naturalization.

VII

The examiner acted as a partisan in the trial before the court although the statute 1446(d) intended not only that both recommendations should be submitted to the court but that another officer of the service should make the presentation.

VIII

The statements attributed to petitioner; that he would not serve in the armed forces; and would retire in Germany; were used to foreclose him from a present willingness to serve in the armed forces and an intention to live in the United States permanently.

ARGUMENT

POINT I

THE FINDINGS OF THE COURT DO NOT SUPPORT REJECTION OF NATURALIZATION

The findings: (1) that Hitler was not a bad man; (2) that Hitler was needed in Germany; (3) that the Nazi Party was preferable to the two major political parties in this country; (4) that conditions in Germany were much better than here under our existing form of government; (5) that he will retire in Germany.

Assuming but not conceding, that these findings were supported by the evidence they must be considered in the light of the applicable law. Schneiderman v. United States, 63 S. Ct. 1333, 320 U.S. 118, contains expressions which are a helpful guide. (138)

"Whatever attitude we may individually hold towards persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the right of free discussion and free thinking to which we as a people claim primary attachment. To neglect this duty in a proceeding in which we are called upon to judge whether a particular individual has failed to manifest attachment to the Constitution would be ironical indeed."

* * *

"(157) There is a material difference between agitation and exhortation calling for present violent action

which creates a clear and present danger of public disorder or other substantive evil, and mere doctrinal justification or prediction of the use of force under hypothetical conditions at some indefinite future time -- prediction that is not calculated or intended to (158) be presently acted upon, thus
*leaving opportunity for general discussion and the calm processes of thought and reason. Cf. Bridges v. California, 314 U.S. 252, 86 L.Ed. 192, 62 S.Ct. 190, and Justice Brandeis' concurring opinion in Whitney v. California, 274 U.S. 357, 372-380, 71 L.Ed 1095, 1104-1108, 47 S.Ct. 641. See also Taylor v. Mississippi, 319 U.S. 583, ante, 1600, 63 S.Ct. 1200; Nos. 826-828 this term. Because of this difference we may assume that Congress intended, by the general test of 'attachment' in the 1906 Act, to deny naturalization to persons falling into the first category but not to those in the second. Such a construction of the statute is to be favored because it preserves for novitiates as well as citizens the full benefit of that freedom of thought which is a fundamental feature of our political institutions." (Emphasis added)

Finding (1) Hitler was not such a bad man.

Taken in context, that at a movie the crowd hissed and petitioner then said "they shouldn't have done that, Hitler was not

such a bad man" (185, line 1); the statement was the expression of an individual. Petitioner never condoned the killing of the Jews (152, line 18). Nor was this statement ever enlarged. Would it disqualify for citizenship a person who would say Napoleon was a great man (though he was responsible for millions of lives lost); or Genghis Khan; or President Johnson; or George Washington (though he led a rebellion); or Abraham Lincoln (despite the Civil War)?

Finding (2) Germany needed Hitler.

What does that mean? When? To do what? Most people agree he destroyed Germany. One witness said the petitioner said, "If I had known the conditions after the First World War until Adolph Hitler took over I would realize that he wasn't such a bad man" (184, line 18). How do we apply that? If we are to exercise judgment, we should know what we are talking about. When Hitler came to power, petitioner was 10 years old. Did he know then how to form a judgment?

If a man ultimately becomes a murderer should we say anyone who knew him or liked him or can remember him "when" is not attached to principles we consider desirable?

Finding (3) that the Nazi Party was preferable to
the two major political parties in this
country.

If such a statement had been made by petitioner (and neither the petitioner's testimony, nor that of the Government's witnesses

support it (Point II) it still means very little. It is a comment made by a person in a discussion. Does it show a lack of attachment to the Constitution? Or an unfavorable disposition to the United States?

Perhaps the Nazi Party was preferable in Germany! Certainly the comment does not mean that the Nazi Party was preferable in the United States. Even in Germany the Nazi Party is no longer preferable to the Germans. Again, we come to the time. Preferable to the Germans -- when? In what way? For what purpose? As a buffer against the communists to the east, it might even now be preferable for the military posture of the United States. Without definition the statement has no real associated meaning as to disposition to the United States; or attachment to the principles of the Constitution.

Finding (4) that conditions in Germany were much
better than here under our existing
form of government.

This finding is not supported by the evidence. If it were, however, what does it mean in relation to attachment to the constitution? How could it show an unfavorable disposition to the United States?

What conditions? Conditions when? In our statement of the case we ask about "conditions". But one thing more with respect to this and that is: if we are supporting the Germans, are our "conditions" better than theirs"? If they are under American occupation are their "conditions" our "conditions" or their

"conditions" ?

Finding (5) that petitioner will retire in Germany.

This is clearly against the weight of the evidence. But arguendo, that might be in 20 or 30 years. Does it show a lack of attachment to the constitution? Or an unfavorable disposition to the United States? Perhaps 50 per cent of the people here speak of retiring to the country in their old age; or of traveling. Does this mean that they will do so? And if it does, is their urban residence temporary?

In passing upon the application for naturalization, the court exercises judicial judgment and does not confer or withhold a favor. Stasiukevich v. Nicolls, 168 F. 2d 474.

Let us ask ourselves also whether approval of the Nazi Party for Germany means approval of the Nazi Party for the United States. Applicant's opinion about other countries is not to be contemplated. In re Kullman, 87 F. Supp. 1001. Nor is it proof that he wished the political principles which he favored for Germany to prevail in the United States; and if he did, that he endorsed force or violence to compel the institution of such principles here. United States v. Rossler, 144 F. 2d 463.

POINT II

THE EVIDENCE DOES NOT SUPPORT THE FINDINGS

We will take the findings seriatim, pointing to all we find

in the testimony that could support them.

Finding (1) that Hitler was not a bad man.

Both witnesses gave testimony that supported this finding.

Finding (2) that Hitler was needed in Germany.

Marinaccio. Nothing in this witness' testimony supports Finding (2). Whetzel. Nothing that directly supports this finding. However, petitioner's alleged statement (184, line 18) "If I had known the conditions after the first World War until Adolph Hitler took over I would realize that he wasn't such a bad man" by some tenuous interpretation might be claimed to support the finding.

Finding (3) that the Nazi Party was preferable to
the two major political parties in this
country.

Marinaccio. (160, line 15)

"Q. Specifically what type of freedom do we have that he didn't believe in?

"A. He didn't believe -- he believed that actually a system was better when the government controlled it, which is what he said they had at home.

(177, line 5) "Q. Now, specifically what did Mr. Renner, specifically what did he say that led you to believe that he thought -- if you did -- that he thought the Nazi regime or government, that he preferred that to our

country? What specifically did he say praising that government?

"A. It is kind of hard to try to pick up specific things that were said. I can't -- I mean I would only be guessing at half the stuff, I mean I don't remember anything specific that was said from time to time. We are talking about years ago now."

Whetzel. (186, line 8)

"Q. Insofar as any conversations now specifically with the Government of the United States is concerned, has he ever made any comments with respect to the two-party system?

"A. He doesn't feel that either party is the right one."

(Objection sustained)

(186, line 20) "Q. What is it that he said, Mrs. Whetzel, in regard to the two party system, in regard to his opinion, or what you consider to be his opinion?

"A. That neither one is the right one.

24. "Q. Has he indicated by way of conversation that he prefers the Nazi form of government to the form of government of the United States?

(187, line 2) "A. To me, yes. The fact that he claimed that Adolph Hitler was such a great man, and that the conditions that they lived in Germany were far superior

to what they are here under our form of government. "

Finding (3) can only be said to be supported by some remote interpretation. The only direct statement that petitioner prefers the Nazi form of government is the witness' own belief based on petitioner's alleged statement that Adolph Hitler was such a great man and that conditions that they lived in Germany were far superior to what they are here under our form of government.

Finding (4) that conditions in Germany were much
better than here under our existing
form of government.

With respect to this finding, there seems to be nothing directly in point. The trial court may have made this finding on an attenuated basis and we must look through the entire appendix for support. The Finding contains two keys: "conditions" and "our existing form of government". With that in mind we will quote everything that might possibly bear on it.

Marinaccio: (151, line 8, et seq.)

8. Well, well he had some real wild ideas about our form of government.

13. He thought there was many things about our government that he didn't like.

14. He thought it was better back home. He expressed this on many different occasions.

17. Back in Germany. He, especially in the be-

ginning when I first knew him (1956).

18. I had to be fair in that respect -- when I first knew him, I mean he

20. was very outspoken about his feelings about his own country.

23. Well, he felt their way of doing things were a lot better than ours. In

24. other words, he didn't think we had enough government control of

25. things over

(152, line 1) here, things were done very loosely.

21. What specific criticisms did he level at the Government of the United

22. States, or the way the Government operates in the United States?

24. Well, I guess it is just that the system that he was brought up under -- I mean they didn't have the (153, line 1) freedom that they have here, and he didn't quite agree that it was right at all times.

3. I mean it is specifically hard to evaluate what he did say about this, that and the other things, I mean, a lot of these things were said many,

5. many years ago. But he definitely was very much against a lot of the things that we did here.

(159, line 22) 1956 or 1957.

(160) 8. Yes. Exactly what did he say and what did

you say about the constitution of the United States?

13. Well, he didn't believe in the type of freedom that we have, basically.

15. Specifically what type of freedom do we have that he didn't believe in?

17. He didn't believe -- he believed that actually a system was better when the government controlled it, which is what he said they had at home.

24. Mr. Marinaccio, can you remember anything specifically that he said along that line at any time?

(161) 1. Not offhand, no.

(177) 5. Now, specifically what did Mr. Renner, specifically what did he say that led you to believe that he thought -- if you did -- that he thought the Nazi regime or government, that he preferred that to our country? What specifically did he say praising that government?

(177) 11. It is kind of hard to try to pick up specific things that were said. I can't -- I mean I would only be guessing at half the stuff, I mean I don't remember anything specific that was said from time to time. We are talking about years ago now.

Whetzel. (184, line 4)

"Q. Insofar as your association with Mr. Renner is concerned, did you at any time have occasion to, during your associations, to discuss with Mr. Renner anything with regard to the United States Government, or the Constitution of the United States?

"A. There were many conversations, but one that I remember, he said that the American people on the whole were stupid, that the Government that Germany had during the Second World War was not as bad as we were made out to be -- these were his words -- that the people do need discipline, and this was a good government . . ."

(186) 24. Has he indicated by way of conversation that he prefers the Nazi form of government to the form of government of the United States?

(187) 2. To me, yes. The fact that he claimed Adolph Hitler was such a great man, and that the conditions that they lived in Germany were far superior to what they are here under our form of government.

From a reading of the above, or all the testimony, it is obvious that the witnesses did not say what Finding (4) says. The references to form of government and system and type of freedom (including speech and ideas) and two party system are used interchangeably. They show an intention on the part of the witness to

hurt petitioner, giving only heat and no light. The examiner and the trial court have substituted the opinions of these two witnesses for that of the petitioner, as well as for their own.

Finding (5) that he will retire in Germany.

This finding has some testimony directly in point. On this point Marinaccio believed he said it years ago (154, line 3) he didn't know whether petitioner had meant it and he didn't know petitioner's feelings now. (154, line 8) he wasn't sure it was within the past five years. Whetzel testified (185, line 24) that he said that he had no intention of staying here all his life, that he was going to retire in Germany. The witness repeated this particular statement as a response to a different question. (195, line 14) That non sequitur was followed by this exchange. (201, line 17) "Oh, what did you say that caused Mr. Renner to make such a statement to you?" (201, line 23) "He was talking about his son joining the army. And he didn't have too much love for his boy -- in fact, the way I understood it the boy joined the army because he wanted to get away from home." (202, line 2) "And I said, 'Wouldn't you like to think that he has become an American citizen?' And he said, 'OH, YES'." (202, line 5) "I said, 'Wouldn't you like to think that he has found a home here and he loves this country? Wouldn't you like to feel this way?' And he said, 'I would never fight for this country.' "

Petitioner's son testified (253) that he was 21 and was in the United States Air Force. He entered the service when he was

seventeen and he had to get the signatures of his parents to enter the service. He did not enter the service to get away from home (253, line 22). His father encouraged him to enter the service. He had seen service in Viet Nam and was now a citizen (254, line 25). His father (petitioner) would serve as he had. (255).

With respect to finding (5) we are asked to believe petitioner would go back to Germany, although his wife and son were citizens here, the son is in the service here and married, and his only other child is here also. Petitioner is a trainer of Guide dogs for the blind, an occupation that does not pay too well in cash, but has all the elements of service to humanity.

Where the testimony of government witnesses in a naturalization proceeding was fragmentary, indefinite and remote, it could not stand alone to support denial of naturalization. Petition of Sittler, 197 F.Supp. 278, affirmed Sittler v. United States, 316 F.2d 312, cert. den., 84 S.Ct. 702, 376 U.S. 932.

POINT III

THE POWER TO DECLARE WHO MAY BECOME CITIZENS RESTS WITH CONGRESS AND NEITHER THE COURTS NOR ANY ADMINISTRATIVE AGENCY MAY EXTEND OR RESTRICT THE REQUIREMENTS ESTABLISHED BY CONGRESS.

United States v. Anzalone, 100 F.Supp. 987,
reversed 197 F.2d 714.

Section 1424 (8 U.S.C.) has a caption head as follows:
PROHIBITION UPON THE NATURALIZATION OF PERSONS OPPOSED TO GOVERNMENT OR LAW, OR WHO FAVOR TOTALITARIAN FORMS OF GOVERNMENT.

In that section, in great detail, Congress has set up restrictions against naturalization of persons who favor totalitarian forms of government. Nothing in the record places the petitioner within the orbit of those limitations. The finding that petitioner is not qualified to become a citizen is something added by the examiner and by the trial court. The cases do not support or approve such an additional limitation. *Ex parte Fillibertie*, 62 F. Supp. 744; *United States v. Girouard*, 149 F.2d 760, reversed 66 S.Ct. 826, 328 U.S. 61.

The feeling of the individual Judge IS NOT THE CORRECT TEST. *Stasiukevich v. Nicolls*, 168 F.2d 474.

POINT IV

IT WAS A FAILURE OF DUE PROCESS FOR THE EXAMINER TO TAKE THE TESTIMONY OF WITNESSES IN OPPOSITION TO NATURALIZATION WITHOUT TAKING THE TESTIMONY OF PETITIONER AND HIS WITNESSES.

An administrative agency does not do its duty when it merely decides upon a poor or non-representative record. As sole representative of public, which is third party in administrative proceedings, agency owes duty to investigate all pertinent

facts and to see that they are adduced when parties have not put them in, and while agency must always act upon the record made, if that record is not sufficient, it should see that the record is supplemented before it acts.

Isbrandtsen Co. v. United States, 96 F.Supp. 883,
affirmed A/S J. Ludwig Mowinckels Rideri v. Is -
brandtsen Co., 72 S.Ct. 623, 342 U.S. 950, 96 L.Ed.
706 and Federal Maritime Bd. v. Unites States,
72 S.Ct. 623, 342 U.S. 950, 96 L.Ed. 706.

8 U.S.C. §1446(b) dictates that the examiner should take the testimony of witnesses and the petitioner. The examiner took the testimony of the government witnesses only. This was both unfair and a failure of due process.

POINT V

THERE WAS A FAILURE OF DUE PROCESS
WHEN A NECESSARY STEP IN THE ADMIN-
ISTRATIVE-JUDICIAL PROCESS WAS LEFT
OUT.

(a) 8 U.S.C. §1446 provides

"(c) The record of the preliminary examination upon any petition for naturalization may, in the discretion of the Attorney General be transmitted to the Attorney General and the recommendation with respect thereto of the employee designated to conduct such preliminary

examination shall when made also be transmitted to the Attorney General. "

The record is devoid of any showing that either the record or the recommendation was ever submitted to the Attorney General or that he ever exercised any discretion. May the employee who makes the recommendation also stand in for the Attorney General?

(b) 8 U.S.C. §1446 also provides:

"(d) The recommendation of the employee designated to conduct any such preliminary examination shall be submitted to the court at the hearing upon the petition and shall include a recommendation that the petition be granted, or denied, or continued, with reasons therefore. In any case in which the recommendation of the Attorney General does not agree with that of the employee designated to conduct such preliminary examination, the recommendations of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer of the Service in attendance at such hearing, shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court . . ."

(Emphasis added)

No recommendation of the Attorney General can be submitted,

if the matter has never been submitted to the Attorney General for his recommendation!!

(c) The omission to include a recommendation of the Attorney General was not an oversight, but the procedure set out by the Commissioner. In the 1953 U. S. Code Congressional and Administrative News the procedure to be followed (and it obviously conflicts with the statute which places the duty on the Attorney General) is delineated:

"Admin. Regulations, Immigration and Nationality Act §335.12 . . . recommendation as to the final disposition of the petition by the court, and shall before final hearing, in those cases designated by the Commissioner submit the memorandum to him for his views and recommendation . . . The Commissioner shall return the designated examiner's memorandum, the record, and any memorandum prepared by the Commissioner containing his own views and recommendation for presentation to the court. "

The Commissioner, in adopting the rules, has substituted himself for the Attorney General for making a recommendation.

The Regulations continue:

§335.13 sub (c)

"Disagreement between recommendations of designated examiner and Commissioner. In those cases reviewed

by the Commissioner in which his views and recommendation do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the Commissioner and that both recommendations will be presented to the court. There shall be enclosed with such notice a copy of the Commissioner's memorandum."

No notice of review or recommendation by the Commissioner was ever sent to the petitioner; and the record is devoid of any such recommendation or of any claim that such notice was sent to the petitioner. This runs contrary to the holding in Simmons v. United States, 348 U.S. 397, 75 S.Ct. 397. Continuing, the regulations state: §336.11:

" . . . In those cases in which the recommendation of the Commissioner does not agree with that of the designated examiner a member of the Service other than the person who conducted the preliminary examination shall, whenever practicable, represent the service before the court . . . "

§336.13 requires:

" . . . The Commissioner's list on Form N-492 or Form N-493, as appropriate, shall be signed by the district director . . . "

Finally, with reference to the procedure, §336.14 requires:

"Presentation of designated examiner's and Commissioner's

recommendation at final hearing. At the final hearing or prior thereto, in addition to the lists prepared under 336.13, there shall be presented to the court and made a part of the record in the case, the memoranda of the designated examiner and the Commissioner, prepared pursuant to provisions of Part 332 or Part 335 of this chapter. "

None of the procedures outlined was followed. The congressional mandate requires that the Attorney General review and supply a recommendation. The requirement of review by the Commissioner can only be an additional step; and both were ignored. Any form of regulation, no matter how slight its burden, must conform to the Act of Congress by virtue of which that regulation purports to be promulgated. United States v. Lehigh Val. Co-op. Farmers, 183 F.Supp. 80, reversed 287 F.2d 726, reversed 82 S.Ct. 1168, 370 U.S. 76, 8 L.Ed.2d 345. Administrative determinations must have a basis in law and must be within the grantor's authority, and it is a judicial function and not an administrative one to determine the limits of the statutory power. J.B. Montgomery, Inc. v. United States, 206 F.Supp. 455, affirmed 84 S.Ct. 884, 376 U.S. 389, 11 L.Ed.2d 797, rehearing denied 84 S.Ct. 1218, 377 U.S. 925, 12 L.Ed.2d 217.

Busey v. Deshler Hotel Co., 130 F.2d 187, 142 A.L.R. 563; United States ex rel. Hirshberg v. Malanaphy, 168 F.2d 503, revd. 69 S.Ct. 530, 336 U.S. 210; United States v. State of California, 67 S.Ct. 1658, 332 U.S. 19,

supplemented 68 S. Ct. 20, 332 U.S. 804; Stark v. Wickard,
64 S. Ct. 559, 321 U.S. 288.

POINT VI

IT WAS ERROR TO ADMIT THE RECORD OF
THE EXAMINER'S HEARINGS, ESPECIALLY
SINCE IT INCLUDED THE HEARSAY LETTER

Counsel for the petitioner objected to the admission of the
record of the examiner's hearings (RT 121, 133, 211). It was ad-
mitted nevertheless. This was error. Stevens v. United States,
190 F.2d 880; Application of Murra, 178 F.2d 670.

Subsequent to the decision by the District Court, on a
motion for a new trial, the trial court stated that its decision was
not based upon the examiner's record (CT 78). The court had had
the record and the hearsay letter before it when making its decision.
Could the error be cured by the later statement in the order denying
the motion for a new trial?

POINT VII

CONGRESS INTENDED THAT THE EXAMINER
NOT ACT AS A PARTISAN IN THE COURT
HEARING WHICH IN EFFECT REVIEWS HIS
DECISION.

8 U.S.C. §1446(d) says:

"In any case in which the recommendation of the
Attorney General does not agree with that of the employee

designated to conduct such preliminary examination the recommendation of both such employee and the Attorney General shall be submitted to the court at the hearing upon the petition, and the officer in attendance at such hearing, shall, at the request of the court, present both the views of such employee and those of the Attorney General with respect to such petition to the court." (Underlining added)

Where Congress intrusts administrative agencies with broad control over activities which in their detail cannot be dealt with directly by Congress, Congress must determine the standards of administrative action, and in administrative proceedings of a quasi judicial character in carrying out such delegated authority, liberty and property of the people must be protected by fair and open hearing. N. L. R. B. v. Pettyman, 117 F.2d 786.

POINT VIII

IS PETITIONER TO BE TESTED BY EVERY PERSON TO WHOM HE TALKED; AND IS WHAT HE IS PURPORTED TO HAVE SAID ABSOLUTE AND BINDING.

The petition sets out a prima facie case for naturalization. Stasiukevich v. Nicolls, 168 F.2d 474. In addition petitioner testified to his attachment to the United States and to the Constitution. He stated in the petition and under oath that he would serve in the

military. The government witnesses testified that he had previously said he would not serve in the military. We come then to the question whether, even if he made those statements which he now denies, he is bound by those answers. Could any person who talks to him get an answer that he will not serve and make that so binding that he cannot thereafter serve? If the government witnesses say he said he would not serve, and the government asks him to serve, would he be precluded? The question seems to answer itself.

Moving to the next comment he is supposed to have made, which is one of the findings against him: Will he retire in Germany? Let us suppose he said to one person ten years back that he will retire in Germany; and to another he said in 1964 that he will retire in Germany; can he change his mind? Is he bound to retire in Germany? Or can he have found the United States so attractive that he not only wants to be a citizen, with his family, but he wants to retire in the United States? Can he change his mind? That question also seems to answer itself. In finding that he made those statements and he therefore is disqualified from becoming a citizen, the court was in error. The proof does not establish that when he made his petition he did not intend to reside in the United States permanently. Petition of Petcheff, 142 F. Supp. 494.

The inference that a prior adverse mental attitude continues into the statutory period, despite his sworn assertion that he has changed his views must be used with caution for otherwise the purpose of the statutory period is destroyed. . . . Nor does a refusal

to bear arms necessarily constitute a bar to naturalization.

Krausse v. United States, 194 F.2d 440; Giruoard v. United States,
328 U.S. 61, 66 S.Ct. 826; Cohnstaedt v. I. & N.S., 339 U.S. 901,
70 S.Ct. 516.

CONCLUSION

THE TRIAL COURT ERRED IN DENYING NATURALIZATION
AND THE CASE SHOULD BE REMANDED WITH INSTRUCTIONS
TO ADMIT APPELLANT TO CITIZENSHIP.

Respectfully submitted,

EDWARD RAIDEN,

Attorney for Appellant

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

/s/ Edward Raiden

EDWARD RAIDEN



APPENDIX

The testimony supporting the findings that Renner did not support the principles of the Constitution was given by two witnesses, Marinaccio and Whetzel. (Marinaccio Direct)

(151)

8. Well, well he had some real wild ideas about our form of government.
13. He thought there was many things about our government that he didn't like.
14. He thought it was better back home. He expressed this on many different occasions.
17. Back in Germany. He, especially in the beginning when I first knew him --
- 18, 19. I had to be fair in that respect -- when I first knew him, I mean he
20. was very outspoken about his feelings about his own country.
23. Well, he felt their way of doing things were a lot better than ours. In
24. other words, he didn't think that we had enough government control of
25. things over

(152)

1. here, things were done very loosely.
2. Q. Did he ever make any mention of his opinion with regard to Adolph Hitler. A. Yes.

A-1.

5. Q. What was that? A. He didn't think that the man had done anything wrong. In fact he thought he was a great man.
8. Q. Did he have anything to say with regard to his opinion of Nazism or National Socialism as practiced in the Third Reich?
11. A. We discussed this many times. I remember him telling me once that I just didn't understand what the problem had been there. I mean, he said,
13. you have to understand what the problem was in Germany after the first
15. World War and so on and so forth. He sort of vindicated everything that
17. they ever did by making excuses one way or the other.
18. Q. Did he ever at any time make any excuses for the mass extermination of the Jews? A. I don't think he ever really discussed that.
21. Q. What specific criticisms did he level at the Govern-
22. ment of the United
22. States, or the way the Government operates in the
24. United States?
24. Well, I guess it is just that the system that he was
- brought up under - - I mean they didn't have the
- (153)
- freedom that they have here, and he
2. didn't quite agree that it was right at all times.

3. I mean it is specifically hard to evaluate what he did
say about this, that and the other thing, I mean, a
lot of these things were said many,
5. many years ago. But he definitely was very much
against a lot of the things that we did here.
19. Q. Insofar as his statements with regard to the United
States Government, or the Government of the Third
22. Reich, do you recall approximately when
the last time was that he expressed an opinion re-
garding any of these matters? A. Oh, within the
last four years, five years.
25. Q. Did he ever indicate to you that it was his

(154)

intention ultimately to return to Germany in order to
reside?

- A. Like I say, I mean what his feelings are now I don't
know. I know years ago that he had mentioned this.
Whether he really meant it or not I don't
5. know. But he did voice the opinion to me but -- I
mean I always understood that he wanted to go back
to Germany.
8. Q. Within the past five years has he indicated this?
A. I can't say for sure if it was that late, but prior to
that definitely.

CROSS EXAMINATION

(159)

2. Q. Now, I believe you said that you and Mr. Renner discussed United States Government and Constitution of the United States.

.

17. Well, the first, first recollection . .

22. 1956 . . or 1957

(160)

8. Q. Yes. Exactly what did he say and what did you say about the Constitution of the United States?

13. A. Well, he didn't believe in the type of freedom that we have, basically.

15. Q. Specifically what type of freedom do we have that he didn't believe in?

17. A. He didn't believe -- he believed that actually a system was better when the government controlled it, which is what he said they had at home.

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24. Q. Mr. Marinaccio, can you remember anything specifically that he said along that line at any time?

(161)

1. A. Not offhand, no.

5. A. There were different occasions when things were said, I mean exactly what were said I don't remember, no.

25. A. I believe I did say that he didn't say the things in the last few

(162)

years that he had said in prior years.

22. Q. Do you know the difference between the United States Government and that of the Hitler regime in Germany the difference in the type of Government?

25. A. I am not an expert, no.

(163)

2. A. I mean all I do know is one is a democracy and the other one is a dictatorship.

24. Q. Now, did Mr. Renner ever tell you that he didn't believe in free elections?

(164)

1. A. No.

2. Q. Did he ever tell you that he didn't believe in freedom of speech?

A. Never said it, no.

5. Q. Did he ever tell you that he didn't believe in the protection we have against self-incrimination?

A. I don't think it was ever discussed.

8. Q. Did he ever specifically tell you that he was opposed to any particular freedom that we have in the United States, under the Constitution of the United States?

11. A. Well, yes.

12. Q. Which one?

A. It is hard to pinpoint, but there were many, many things that did bother him about what we did and what they did.

16. Q. Is there anything that bothers you about what this government does?

A. I guess so, yes, true.

(176)

25. Q. I believe you did say, in answer to Mr.

(177)

1. Simpson's question, that you never heard Erich comment one way or the other on the mass extermination of the Jews by Hitler?

4. A. That's right.

5. Q. Now, specifically what did Mr. Renner, specifically what did he say that led you to believe that he thought -- if you did -- that he thought the Nazi regime or government, that he preferred that to our country? What specifically did he say praising that government?

11. A. It is kind of hard to try to pick up specific things that were said. I can't -- I mean I would only be guessing at half the stuff, I mean I don't remember anything specific that was said from time to time. We are talking about years ago now.

(184)

4. Q. Insofar as your association with Mr. Renner is concerned, did you at any time have occasion to, during your associations, to discuss with Mr. Renner anything with regard to the United States Government, or the Constitution of the United States?

12. A. There were many conversations, but one that I remember, he said that the American Government was too soft, and that the American people on the whole were stupid, that the Government that Germany had during the Second World War was not as bad as we were made out to be, --- these were his words -- that the people do need discipline, and this was a good government. If I had known the conditions after the first World War until Adolph Hitler took over I would realize that he wasn't such a bad man.

22. He gave me an example, when he was in Norway during the German occupation he went to a movie. And when the image of Adolph Hitler came on the screen the people began to hiss and spit and his answer -- his

(185)

1. words to me then were "Audrey, they shouldn't have done that, Adolph Hitler was not such a bad man."

7. Q. Did any of these conversations involve a discussion

A-7.

at any time of Mr. Renner's willingness to bear arms in defense of the United States, should he be required by law?

11. A. He told me on many occasions -- and one particular occasion took place in my home, his wife and my husband were present, and my two daughters -- and he said, "I would never fight for this country."

20. Q. Insofar as your conversations, or Mr. Renner's conversations are concerned, did he make any statements with regard to his intention to reside permanently in the United States?

24. A. In the day room at International Guiding Eyes Winifred Goff was present. And he said that he had

(186)

no intention of staying here all his life, that he was going to retire in Germany.

3. And when I asked him why was he here now, he said, "Strictly for the money."

8. Q. Insofar as any conversations now specifically with the Government of the United States is concerned, has he ever made any comments with respect to the two-party system?

A. He doesn't feel that either party is the right one.

(Objection sustained)

20. Q. What is it that he said, Mrs. Whetzel, in regard to the two-party system, in regard to his opinion, or

what you consider to be his opinion?

A. That neither one is the right one.

24. Q. Has he indicated by way of conversation that he prefers the Nazi form of government to the form

(187)

of government of the United States?

2. A. To me, yes. The fact that he claimed that Adolph Hitler was such a great man, and that the conditions that they lived in Germany were far superior to what they are here under our form of government.

CROSS-EXAMINATION

(194)

17. Q. Now, during this period of time did Mr. Renner make any remarks to you about what he thought of this nation, this country?

A. Mr. Renner not only made these remarks to me, but he made them in front of the other students, too, Winifred Goff, during the training.

(Winifred Goff was never called)

23. Q. That is not the question --

A. During the training.

Q. Mrs. Whetzel, did he make these remarks which you have stated about Hitler running a better government than the United States during that month you were training?

(195)

4. A. Not that particular statement in that particular way.
- Q. Well, what statement did he make during that period?
- A. He said that he would never fight for this country.
10. Q. He said that --
- A. He gave the instance that I described in Norway at this particular time.
- Q. Yes.
- A. And he also made the statement that he had no intentions of living here the rest of his life, that he would go back to Germany to retire, that he was here strictly for the money.

(201)

17. Q. . . . oh, what did you say that caused Mr. Renner to make such a statement to you?
-
23. A. He was talking about his son joining the army. And he didn't have too much love for his boy -- in fact, the way I understood it the boy joined the army because he wanted to get away from home.

(202)

2. And I said, "Wouldn't you like to think that he has become an American citizen?" And he said, "Oh, yes."
5. I said, "Wouldn't you like to think that he has found a home here and he loves this country? Wouldn't

you like to feel this way?" And he said, "I would never fight for this country."

